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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

Appeal from the District Court of the United States for the District of Maryland.

BRIEF FOR APPELLANT.

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Appeal from the District Court of the United States for the District of Maryland.

BRIEF FOR APPELLANT.

STATEMENT.

This is an appeal from the order, judgment and decree of the Court entered on the 24th day of June, 1921, in the District Court of the United States for the District of Maryland, sustaining a motion to dismiss complainant's amended bill. The amended bill alleges that complainant is a citizen and resident of

Baltimore County and State of Maryland, and that defendant Joshua W. Miles is a citizen and resident of Somerset County, in said state, and is Collector of the Internal Revenue of the United States for the District of Maryland; and that Richard S. Dodson is a citizen and resident of Talbot County, in said state, and is Federal Prohibition Director for the State of Maryland.

That defendant Joshua W. Miles, as such Collector, is charged by law with the duty of collecting and receiving taxes due the United States on distilled spirits in government bonded warehouses in his district, and upon the payment of taxes due on such distilled spirits by the owners thereof to issue internal revenue stamps showing payment of said taxes, and to release the spirits to the owners; that the government bonded warehouses in said district and the distilled spirits on deposit therein and the keys to said warehouses and the right to ingress and egress from and to the same is in the custody and control of defendant Joshua W. Miles.

That defendant Richard S. Dodson is the duly appointed, qualified and acting Federal Prohibition Director for the State of Maryland, and is the acting agent or assistant of the Commissioner of Internal Revenue of the United States, and as such, under the "National Prohibition Act," is charged with the duty of issuing permits for the delivery, transportation

and possession of distilled spirits to persons lawfully entitled to accept delivery thereof, transport and possess same; and, where such distilled spirits are on deposit in government bonded warehouses, to issue permits for the delivery thereof to the owners and for the transportation of same by such owners from such government bonded warehouses to their respective private dwellings or other places where same may be lawfully kept, upon payment of the federal taxes due thereon to the Collector of Internal Revenue for the district.

That the complainant is the owner of one barrel of distilled spirits, commercially known as "Pikesville Pure Rye Whisky," and became the owner thereof and has owned same ever since the 2nd day of October, 1919; that said spirits are now on deposit in the government bonded warehouse known as Distillery Bonded Warehouse "E" of the United States of Registered Distillery No. 25, located at Pikesville, in Baltimore County, in the State of Maryland, and in the United States Internal Revenue District for the State of Maryland; that the said spirits are contained in a wooden barrel, No. 43892, containing approximately forty taxable gallons, produced by the Pikesville Distillery Company at Registered Distillery No. 25, in Baltimore County, Maryland, in the United States Internal Revenue District for said State, and

that there is due the United States as tax on the said barrel of spirits the sum of $256.00.

That the complainant did, on the 8th day of April, 1921, present to the defendant Richard S. Dodson, Federal Prohibition Director, a verified written application setting forth the qualification of the applicant, and that he desired to obtain delivery and to transport said distilled spirits to his private dwelling, situated in Baltimore County, Maryland, and which is occupied by him as his dwelling only, for the personal consumption of himself and his family residing in said dwelling and of his bona fide guests when entertained therein by him, all of which more fully appears in the said verified application marked "Complainant's Exhibit No. 1," filed with the bill of complaint, and that defendant Dodson wrongfully and without authority of law refused to grant the permit applied for, which refusal of said defendant Dodson is in writing and filed with the bill and marked "Complainant's Exhibit No. 2."

That the complainant before the filing of his bill tendered to the defendant Joshua W. Miles, Collector of Internal Revenue for the District of Maryland, the sum of $256.00 in lawful money of the United States, same being the full amount of the taxes due the United States on said distilled spirits, and demanded of said Miles that he issue to the complainant United States Internal Revenue Stamps showing the

payment of the said tax on said spirits, and demanded that he release said spirits, which said defendant Miles refused to do, which said tender and demand and refusal were in writing and is filed with the bill, marked "Complainant's Exhibit No. 3."

The complainant further alleges in his amended bill that he desires to obtain possession of the said distilled spirits as his private property and to transport the same to his private dwelling situated on the south side of the Court Road, near Green Spring Avenue, in Baltimore County, Maryland, which said dwelling is occupied and used by the complainant as his dwelling only, and to keep the same in said dwelling for the personal use of himself, the members of his family and his bona fide guests when entertained therein; that he does not desire the possession of the said spirits for the purpose of barter or sale or disposing of the same in violation of any law of the United States.

The amended bill further alleges that in refusing to grant the permit for the delivery of said spirits and to accept the tender of taxes thereon and to issue internal revenue stamps therefor, showing payment, the defendants claimed to have acted under the terms and authority of what is commonly called the Volstead Act. But that complainant is

advised and avers that the said Volstead Act contains no provisions which required or authorized the defendants to refuse said permit or to decline to receive payment of said taxes for the reason, among others, that said distilled spirits were purchased by the complainant prior to the effective date of the said Volstead Act and that he purchased said spirits solely for delivery to his private dwelling and solely for the personal use of himself, his family and bona fide guests when entertained therein by him; and further alleges that the removal of the said distilled spirits from the said United States bonded warehouse to his private dwelling for the said purposes specified, on the payment of the tax thereon, is not forbidden by the Eighteenth Amendment or the said Volstead Act. Complainant further alleges that if said Volstead Act is susceptible of a construction authorizing or justifying the action of the defendants, so much of said statute is unconstitutional, void and of no effect, for the reason that it transcends the power of Congress under the Eighteenth Amendment to the Constitution of the United States and deprives the complainant of his property without due process of law and without just compensation, and denies him the equal protection of the laws, contrary to the Fifth Amendment to the Constitution of the United States.

The amended bill of complaint prays for the issuance of a writ of injunction directed to the defendant Richard S. Dodson, Federal Prohibition Director, directing him to grant and issue the permit applied for and enjoining him from preventing or interfering with the removal by the complainant of said distilled spirits from said bonded warehouse to the complainant's private dwelling for lawful use and consumption; and that the Court issue its writ of injunction directed to the defendant Joshua W. Miles, Collector aforesaid, restraining and strictly enjoining him, upon payment by the complainant of all taxes lawfully due the United States on or in respect to the said distilled spirits, from longer refusing to issue revenue stamps showing payment of such taxes or from refusing to release said spirits to the complainant, and from longer denying to complainant access to said spirits in said bonded warehouse or preventing him from taking and having possession of his distilled spirits therein for the purpose of removing same to complainant's private dwelling for lawful use and consumption therein as set out in the amended bill of complaint; and from preventing or interfering with the removal by complainant of said spirits from said bonded warehouse, for the aforesaid purposes, and from longer detaining and withholding from the complainant the lawful possession of his said distilled spirits; and, also,

directing and requiring said defendants, upon payment or due tender of said taxes, to deliver said distilled spirits to the complainant and to permit him to take possession of and remove the same from said bonded warehouse to the complainant's said private dwelling for lawful consumption therein as set forth in the amended bill; and that the complainant have such other and further relief as his case may require.

The defendants filed a motion to dismiss the amended bill of complaint. The facts and allegations contained in the amended bill are admitted, therefore, to be true by the motion to dismiss. The Court below sustained the motion and dismissed the amended bill of complaint. A constitutional question being involved, complainant is here by direct appeal.

ASSIGNMENT OF ERRORS.

The Appellant makes the following assignment and specification of errors:

I.

The Court erred in sustaining the defendants' motion to dismiss said amended bill and in entering a decree in dismissing said bill.

II.

Said decree deprives the complainant of the protection of the Fifth Amendment to the Constitution of the United States, in that it sanctions the taking of the complainant's private property without due process of law, and the taking of the complainant's private property for a public use without any compensation.

III.

Said decree is neither supported nor sustained by the Eighteenth Amendment to the Constitution of the United States.

IV.

The Court erred in holding that the National Prohibition Act forbids the removal by the complainant of the spirits mentioned in the amended bill of complaint from the bonded warehouse to his residence for the lawful consumption of himself, his family and his bona fide guests.

V.

The Court erred in holding that it is not the duty of the defendant, Joshua W. Miles, as Collector of Internal Revenue, to issue stamps on payment of the federal taxes on said distilled spirits, and to issue a permit for the removal thereof by the complainant from the bonded warehouse to his bona fide residence for the purpose specified in the amended bill of complaint.

VI.

The Court erred in holding that it was not the duty of the defendant, Joshua W. Miles, as Collector of Internal Revenue, to release unto the complainant the possession of the distilled spirits mentioned in the amended bill of complaint and now in the bonded warehouse as therein stated.

VII.

The Court erred in holding that it was not the duty of the defendant, Richard S. Dodson, as Federal Prohibition Director for the State of Maryland, to issue to the complainant a permit for the removal by him of the distilled spirits mentioned in the amended bill of complaint from the bonded warehouse to the complainant's bona fide residence for the purposes specified in said amended bill.

VIII.

Under the allegations of the complainant's amended bill, he is entitled to a decree against the defendants compelling and directing the defendants to release to the complainant the spirits described in said amended bill.

BRIEF OF THE ARGUMENT.

I.

The motion to dismiss the amended bill of complaint admits all the allegation contained therein. A constitutional question being involved, the cause comes to the Supreme Court of the United States on direct appeal.

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31.

II.

The complainant has no remedy at law and by his bill has pursued the proper legal course and the Court is possessed of jurisdiction to hear and determine the questions involved and grant the relief for which complainant prays.

United States Compiled Statutes 1916, Sec. 1560;

National Prohibition Act, Title II, Sections 5 and 6.

Foster on Federal Practice, p. 722, Sec. 221;

Hoffman Brewing Co. v. McElligott, 259 Fed. 321, 525.

Pollard v. Reardon, 65 Fed. 848.

Gretch Manufacturing Co. v. Schoening, 238 Fed. 780.

III.

The National Prohibition Act authorizes the transportation of distilled spirits lawfully acquired before the effective date of the Act from a government bonded warehouse to the private dwelling of the owner for the uses permitted in Section 33, Title II, of said Act.

National Prohibition Act, Title II, Sec. 37;
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31;
Public Resolution No. 64, 66th Congress, approved by President March 3, 1921.

IV.

The delivery of the barrel of distilled spirits to complainant and its transportation from the government bonded warehouse to his private dwelling for lawful consumption therein, as authorized by Section 33, Title II, of the National Prohibition Act, does not violate any provision of said Act. The access to, delivery and transportation of said spirits to complainant's private dwelling is not a "delivery" and "transportation" within the meaning of Section 3, Title II, of the Act.

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31;
National Prohibition Act, Title II, Secs. 33, 37 and Proviso in Sec. 3;
10 A. L. R., pp. 1543, 1548.

V.

Congress, in passing the National Prohibition Act, was concerned about and dealt with the prevention of the manufacture and sale of intoxicating liquors for beverage purposes in the **future.** It was not concerned about the **consumption** of distilled spirits as a **beverage,** which were manufactured and owned **prior** to the effective date of the Eighteenth Amendment to the Constitution and the effective date of the National Prohibition **Act.**

Neither the Amendment nor the Act prevents the **use** for beverage purposes of distilled spirits manufactured and owned **prior** to their effective dates. In fact, Section 33, Title II, of the Act specifically authorizes the **use** of such spirits for **beverage purposes.** Anything else would have been confiscation of such lawfully acquired spirits. Mr. Justice McReynolds in his concurring opinion in the Street case, in discussing the National Prohibition Act and the power of Congress to prevent the consumption by the owner of distilled spirits lawfully acquired, said that to interfere with such use or consumption would be virtual confiscation and that "The Eighteenth Amendment gave no such power to Congress."

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31.

VI.

The Eighteenth Amendment is expressly prospective in its operation and does not prohibit the use or transportation, for beverage purposes, of liquor lawfully acquired before its adoption.

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31;
Reynolds v. McArthur, 11 Pet. 417, 437;
Ladiga v. Rowland, 11 Howard 581, 589;
Supervisors v. Galbraith, 99 U. S. 214;
Shreveport v. Cole, 129 U. S. 36;
Leet v. State Bank, 115 Mo. 184;
National Prohibition Act, Sections 33 and 37, Title II.

VII.

If the National Prohibition Act denies to complainant possession of his distilled spirits, and the right to transport same to his private dwelling, then it is in conflict with the Fifth Amendment to the Constitution of the United States, and to that extent is void.

Fifth Amendment, Constitution of the United States;
Wynehamer v. People, 13 N. Y. 378;
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep. 31.

VIII.

Intoxicating liquor, manufactured and lawfully acquired, prior to the adoption of the Eighteenth Amendment, is property, and the right to use it, possess it and enjoy it is property, within the meaning of that term as used in the Fifth Amendment.

License Cases, 46 U. S. 504, 577;
Slaughter House Cases, 83 U. S. 36, 127;
Wynehamer v. People, 13 N. Y. 378, 396;
Preston v. Drew, 33 Me. 558;
Lincoln v. Smith, 27 Vt. 328;
Scranton v. Wheeler, 179 U. S. 141, 170;
Braceville Coal Co. v. People, 147 Ill. 66;
Beer Co. v. Massachusetts, 97 U. S. 25, 32;
Bardemyer v. Iowa, 18 Wall. 129;
Street v. Safe Deposit Co., Vol. XLI, No. 3, Sup. Court Rep. 31.

IX.

The right of possession is one of the chief incidents of property.

Blackstone, Vol. II, 389;
Wynehamer v. People, 13 N. Y., l. c. 433;
Chicago & W. I. R. Co. v. Englewood C. R. Co., 115 Ill. 375, 385;
Grand Rapids Booming Co. v. Jarvis, 30 Mich. 308, 320.

X.

The Eighteenth Amendment does not repeal the Fifth Amendment.

Petri v. Creelman Lbr. Co., 199 U. S. 487, 497;
Tex. P. Ry. v. Abilene Cotton Oil Co., 204 U. S. 426, 437;
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. C. R. 31;
Chicago & W. I. R. Co. v. Englewood C. R. Co., 115 Ill. 375, 385;
Grand Rapids Booming Co. v. Jarvis, 30 Mich. 308, 320.

XI.

Warehouse receipts for distilled spirits in bond were, prior to the passage of the National Prohibition Act, and are now by the provisions contained in the proviso in Section 3, Title II of the Act, negotiable instruments, and the title to the spirits called for by the receipt passes by the sale and delivery of the receipt. The proviso contained in said section, authorizing the sale and purchase of receipts for spirits manufactured and deposited in bond prior to the effective date of the act, by necessary implication authorizes the delivery and transportation of the property to the private dwelling of the owner for lawful consumption therein.

Tany v. Bank, 232 U. S. 138, 167 Fed. 689, 700;
Brown v. Maryland, 12 Wheat 419, 447.

XII.

The right of the complainant to the possession and transportation of his distilled spirits to his private dwelling, under the facts in this case, is authorized under the provisions of the National Prohibition Act. If it is not, then the act, to the extent of its denial of these rights, is in violation of the Fifth and Eighteenth Amendments.

National Prohibition Act, Sections 3, 33 and 37, Title II;
Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31.

XIII.

The Eighteenth Amendment to the Constitution is prospective in its operation and was designed to eventually end the **use** of distilled spirits as a **beverage**. Spirits manufactured and owned prior to its effective date can be used for beverage purposes in the private dwelling of the owner and can be possessed, delivered and transported to the private dwelling for such purpose. When such spirits are exhausted then the **use** as a beverage will be at an end. Congress has no power under the Eighteenth Amendment to prevent such use, and any act of Congress prohibiting such use of such liquors would be unconstitutional.

The proviso in Section 3, Title II of the National Prohibition Act authorizes the purchase and sale of such receipts; section 37 authorizes the delivery and transportation from bond to the private dwelling of the owner and section 33 authorizes the consumption of the spirits by the owner, his family and bona fide guests when entertained by him therein. Such delivery and transportation does not violate section 3 of the act. Warehouse receipts for such spirits can be bought and sold as long as the spirits are in bond.

Street v. Lincoln Safe Deposit Co., Vol. 41, No. 3, Sup. Court Rep., p. 31.

XIV.

Complainant is compelled under the law to pay monthly storage charges without limit as to duration. There is a constant "outage" by seepage and evaporation. The refusal of the defendants to deliver to him his spirits, upon payment of the taxes due the Government, and to permit him to transport same to his private dwelling for lawful consumption therein, forces complainant to pay storage charges without limit as to duration and thereby eventually consume the value of his property and by "outage" his spirits will be entirely lost or destroyed.

XV.

Neither the National Prohibition Act nor any regulation of the Bureau of Internal Revenue require a permit to transport spirits manufactured and owned before the effective date of the act from bond to the owner's private dwelling for the beverage uses therein provided in Section 33 of the Act. The permit required by Section 6 of the Act is where the liquor is to be transported for medicinal and no other purpose, and which liquor may be sold upon prescription. The provision being penal, it must be strictly construed. The bureau has administrative power to make regulations for the transportation from bond to the private dwelling for beverage uses therein, but until it does so, no permit is required. There was no permit in the Street case. This point is argued because of the motion to argue and submit the instant case with cases in which no permits were asked or applied for. We removed the question from this case by applying for a permit.

Street v. Lincoln Safe Deposit Co., Vol. 41, Sup. Court Rep., p. 31.

ARGUMENT.

I.

Under the decision in the case of Street v. Lincoln Safe Deposit Company the appellant is entitled to the relief for which he prays. "Delivery" and "transportation" of spirits manufactured and owned before the effective date of the National Prohibition Act, from the Government bonded warehouse to the private dwelling of the owner for lawful consumption therein is not a "delivery" and "transportation" within the meaning of Section 3 of the Act.

A motion has been filed to advance this cause and argue and submit same jointly with the cases of Corneli v. Moore, No. 174, and Ghio v. Moore, No. 175, on Monday, October 10th, 1921. The principal questions involved in the three cases are practically the same, and on the theory the motion will be sustained, we will not, in this brief, cover the arguments in the briefs in those cases any more than is necessary to present the instant case.

It is respectfully submitted that the appellant is entitled to the relief for which he prays under the decision of this Honorable Court in the case of Street v. Lincoln Safe Deposit Company, decided November 8, 1920.

In that case it was held that a person who had lawfully purchased distilled spirits for personal con-

sumption, and had stored the same in a warehouse belonging to a corporation authorized to engage in the warehousing business, was entitled to obtain the same from the warehouse for use as a beverage, notwithstanding the Eighteenth Amendment and the National Prohibition Act. In the majority opinion it was held that the National Prohibition Act, when properly construed, did not forbid the delivery of the spirits by the Warehouse Company to the complainant for the purposes specified, and that the removal of the spirits by the complainant from the warehouse to his private dwelling was not "transportation" within the meaning of either the Eighteenth Amendment or Section 3 of the Act. Mr. Justice McReynolds concurred in the judgment of the Court on the ground that the act did intend to forbid such removal, but that to enforce it as thus construed would result in virtual confiscation of lawfully acquired liquors, which was beyond the power granted to Congress by the Eighteenth Amendment.

The present case is identical in principle with the Street case, with the exception only that the spirits in question are on deposit, not in a private warehouse, but in a Government Bonded Warehouse. The appellant contends, however, that there is nothing in this circumstance to justify any different application of the principles laid down in the Street case, but that on the contrary, these principles are even more

clearly applicable to spirits in a Government Bonded Warehouse than to spirits in a private warehouse. That this is so becomes apparent from an analysis of the reasoning of the Court in the Street case in its relation to the facts in the present case. This analysis and comparison will accordingly be made in detail.

At the outset, the mode in which the Court stated the question decided by it in the Street case is significant. The Court's language is as follows:

> "May a warehousing corporation lawfully permit to be stored in its warehouse, after the effective date of the Volstead Act, liquors admitted to have been lawfully acquired before that date, and which are so stored, solely and in good faith for the purpose of preserving and protecting them until they shall be consumed by the owner and his family, or bona fide guests?"

No distinction is here suggested between a private warehouse and a Government Bonded Warehouse. There is no such distinction that is pertinent to the present controversy, for a Government Bonded Warehouse is simply a private warehouse over which the Government exercises a certain supervision, and in which it has certain rights, for the purpose of collecting revenue payable in respect of the spirits on storage. The other circumstances referred to by the

Court in the above passage are identical with those in the present case.

The general attitude of the Supreme Court toward the general question involved in the present case is clearly stated by Mr. Justice Clarke who delivered the opinion of the Court in the following passage:

> "Since here, as always, the purpose of Congress in enacting a law is of importance in determining the meaning of it, it is noteworthy that title 11 of the Volstead Act was passed under the grant of power to enforce the first section of the Eighteenth Amendment to the Constitution of the United States, which prohibits the manufacture, sale, and transportation of intoxicating liquors for beverage purposes, **but does not indicate any purpose to confiscate liquors lawfully owned at the time the Amendment should become effective, and which the owner intended to use in a lawful manner.**"

The underscored passage is the very crux of the case. The Court says distinctly that the National Prohibition Act indicates no purpose to confiscate liquors "lawfully owned" at the time the Eighteenth Amendment should become effective, and which the owner intended to use in a "lawful manner." No mention is made here as to the location of the "lawfully owned" liquor intended for use in a "lawful manner." Here again, the appellant's position brings the case squarely within the application of the above

language, so that any distinction based on the place of storage, assuming that both places are lawful, would have no sound basis in principle.

One of the major arguments pressed upon the Supreme Court in the Street case was that "possession" of the spirits by the warehouse company was forbidden by the National Prohibition Act. The Government based this contention upon the provisions of sections 25 and 21 of the Act. This Honorable Court, however, disposed of the argument based on section 25 by pointing out that the possession thereby forbidden was of liquor intended "for use in violating this title," whereas the consumption of the spirits by the complainant in his own home is not in violation of the title. It disposed of the contention based on section 21 by saying that the word "kept" plainly means "kept for sale or barter, or other commercial purpose," the inapplicability of which to the case was apparent.

All this is obviously pertinent to the instant case with this important difference; that no possible question could arise as to whether the keeping of the complainant's spirits in the **Government Bonded Warehouse** is an unlawful possession, whereas, there was room for possible doubt with reference to the custody of liquor in a private warehouse. In this respect, therefore, the present case is even stronger than the Street case, for we start with the unquestionable fact

that the present possession of the complainant's spirits is entirely lawful, and that the purpose to which the complainant intends to put them is equally lawful, so that the only question left for consideration is, as to whether permitting the plaintiff to have access to the spirits, and to remove them to his private dwelling for an admittedly lawful purpose is a "delivery" and "transportation" within the meaning and terms of Section 3 of the National Prohibition Act.

On these points it is submitted that the Street case is absolutely conclusive. The prohibition against "delivery" of intoxicating liquors is directed against persons not "authorized" by the Act to "possess" the same, and the Court held that the relation of the storage company to the distilled spirits would not constitute an unlawful possession of them, nor would its act in permitting the owner to have access to the liquors to take them to his dwelling for lawful consumption and use therein be a "delivery" of them within the meaning of said third section of the Act.

The above contentions being disposed of, there was left for decision whether the removal of the liquors from the warehouse to the home of the complainant was such "transportation" as was prohibited by Section 3 of the Act. That this question requires a negative answer was held to be "too apparent to justify detailed consideration of the many provisions of

the act inconsistent with a construction which would render such removal unlawful."

Among other things, the Court referred to the regulations of the Bureau of Internal Revenue authorizing permits for the transportation of liquors from one permanent residence of an owner to another, although no such transfer is in terms provided for by the Act. The Court further points out that there is like administrative power under the Act to so regulate the transfer of such stored liquors from a warehouse to the dwelling of the owner as to prevent their being used to evade the prohibitions of the Act, or to substantially interfere with its effective enforcement.

All of these considerations are obviously applicable to the present case. The removal of spirits from a Government Bonded Warehouse to the complainant's private dwelling for lawful use is no more a "transportation" of them than a like removal from a private warehouse; and there is the same administrative power on the part of the Bureau of Internal Revenue to make protective regulations in the one case as in the other.

Finally, the general attitude of the Court toward the removal and lawful consumption of spirits manufactured and owned before the effective date of the Eighteenth Amendment and the National Prohibition Act is summed up in the conclusion of the opinion,

which is so pertinent to the situation presented in the instant case that we quote same in full.

> "It may be that the custody of liquors by a warehouse company was thus not declared to be unlawful because the writers of the act did not have such a case in mind; but it was more **probably because Congress would not consent to allow lawful possession and use of liquors in dwellings having storage facilities for them, while denying the only possible means of preserving and protecting such liquors to persons with less commodious homes.** The Congress was concerned with the great problem of preventing the manufacture and sale of intoxicating liquors for beverage purposes **in the future,** and it seems to have given but slight attention to the **consumption** of such relatively small amounts of such liquors as might be in existence in private ownership, and intended for consumption by the owner, his family or his guests, when the Amendment and the act should take effect.
>
> "An intention to confiscate private property, even in intoxicating liquors, will not be raised by inference and construction from provisions of law which have ample field for their operation in effecting a purpose clearly indicated and declared."

There is not a single principle decided or consideration referred to in the Street case which loses its pertinency to the present case on account of the difference in the character of the depository of the

spirits. On the contrary, the complete analogy in all substantial particulars between the two cases is so striking that further comment cannot make it clearer.

The majority opinion in the Street case is based on the holding that the National Prohibition Act, when properly construed, does not prohibit the delivery and transportation of the spirits under the circumstances shown. Mr. Justice McReynolds was of the opinion that the Act did forbid the transportation in question, but said that, "to enforce it as thus construed would result in virtual confiscation of lawfully acquired liquors by preventing or unduly interfering with their consumption by the owner. The Eighteenth Amendment gave no such power to Congress. Manufacture, sale and transportation are the things prohibited—not personal use." Mr. Justice McReynolds' view is in nowise inconsistent with the majority opinion which construed the statute as not reaching the acts in question, and, of course, did not attempt to decide whether the Act would have been constitutional and valid if construed otherwise.

It is submitted that if the National Prohibition Act was susceptible of a construction which would prevent the removal by this complainant of his lawfully acquired spirits from the government bonded warehouse to his private dwelling, for his personal consumption therein, as expressly authorized by Section 33 of the Act, then such part of the Act would be un-

constitutional because it would confiscate complainant's property in violation of the Fifth Amendment to the Constitution.

Congress has no power to regulate the use of intoxicating liquors except as authorized by the Eighteenth Amendment. The Eighteenth Amendment prohibits only the manufacture, transportation and sale of intoxicating liquor. The Street case holds that the removal of intoxicating liquor, acquired before the Eighteenth Amendment became effective, from a lawful place of deposit to the owner's private dwelling for personal consumption is not such transportation as is forbidden by the Constitution. It seems inevitably to follow, therefore, that in attempting to forbid such removal, Congress would clearly exceed the power of enforcement conferred on it by the Eighteenth Amendment. It is well settled that a construction of any statute is to be avoided which would render doubtful the constitutionality of the statute.

II.

Neither the National Prohibition Act nor any regulation of the Bureau of Internal Revenue require a permit to remove distilled spirits manufactured and owned before the effective date of the Act, from a government bonded warehouse to the owner's private residence for lawful consumption therein. The bureau has administrative power to make a regulation requiring one, but did not do so, and the Court will take notice of this fact. The permit required by the Act (section 6) is where same is transported solely for medicinal purposes and for sale by prescription. We make this argument here solely because of our motion to advance and argue and submit this case jointly with the Corneli and Ghio cases. In the instant case we applied for a permit, so as to remove that question from this case.

The National Prohibition Act does not require a permit to transport distilled spirits from a government bonded warehouse to the private dwelling of the owner for lawful consumption therein, of spirits manufactured and owned prior to the effective date of the Act. While the Bureau of Internal Revenue has administrative power to regulate such transfers and transportation of such spirits for beverage consumption in the dwelling, yet it has refused to make

any rules or regulation and there were no regulations or rules requiring permits for delivery and transportation of such spirits for such purpose and to such a place. The Court will take notice there was no bureau regulation requiring a permit for such a delivery and transportation. There was no permit in the Street case.

Permits required under the provisions of Section 6, Title II, of National Prohibition Act, are when the delivery and transportation are for **medicinal** purposes and where same is for **sale** under the law and the bureau regulations. The provisions of said section have no application whatever to the delivery and transportation of the spirits in question.

Neither the National Prohibition Act nor the rules and regulations of the Bureau of Internal Revenue require a permit before spirits manufactured and owned prior to the effective date of the Act can be delivered to the owner and transferred or transported by him from the government bonded warehouse to his private dwelling for lawful consumption therein as a beverage, and as provided and authorized by Section 33 of said Act.

Section 6 of said Act is penal and must be strictly construed. Where the liquor is to be delivered, transported and used for the medicinal purposes specifically named and set forth therein, then a **permit** is required, but that section cannot, by any stretch or

liberal construction, include delivery and transportation from bond to the private dwelling for lawful beverage use therein by the owner of spirits manufactured and owned prior to the effective date of the Act.

The first case of Corneli v. Moore, 267 Fed. 456, in the District Court for the Eastern District of Missouri, now case No. 174 on the docket of this Honorable Court, and with which we have asked by proper motion that the instant case be jointly argued and submitted, was decided by Faris, District Judge, on September 21, 1920. This was prior to the Street case, and inasmuch as the District Court s decision is based on the ground that the removal of the liquor from a warehouse to the owner's dwelling is such "transportation" as is forbidden by the Eighteenth Amendment and the National Prohibition Act, it is clearly overruled by the Street case. The commentator in 10 A. L. R. 1553 says:

> "That the possession and transportation under the circumstances existing in the reported (Street) case are not illegal is now finally decided by that case. The decision in **Corneli v. Moore** (1920), 267 Fed. 456, to the effect that the provision of the Volstead Act against "transporting" intoxicating liquor necessarily prevents the owner from moving the whisky owned by him from a bonded warehouse in which it has been stored to his residence, for the purpose of there

consuming it for beverage purposes, seems to be contrary to the decision in the reported (Street) case. There does not seem to be sufficient difference between the cases to warrant a different decision."

The second case of Corneli v. Moore, 268 Fed. 993, was decided by the same court on December 11, 1920, which was after the decision in the Street case. The principal ground for the decision, however, was that the War-Time Prohibition Act (40 St. at Large, p. 1046), which was then in force, specifically forbade the removal of spirits in bond. The Court further stated, however, that under Section 6, Title 2, of the National Prohibition Act, taxes may be paid, and revenue stamps may be affixed, only by persons holding permits for transportation issued in accordance with that section, and pointed out that the "plaintiff neither possesses a permit, nor does he plead any facts in relation hereto." No permit, however, is required for a removal such as was desired by Corneli either by the Prohibition Act or by any bureau regulation. Of this there can be no question or doubt.

In the present case, however, the complainant specifically plead he had applied for such a permit, and that the Prohibition Director had refused to issue the same. He has attempted to comply with whatever, if any, duty or obligation rested upon him to obtain such a permit. Thus he has avoided this contention

raised in the Corneli case, and we present this argument here solely because, under our motion in this case, it may be jointly argued and submitted with the Corneli and Ghio cases, in each of which no application was made for a permit, and the attorneys in those cases are also attorneys in this case.

Furthermore, it is submitted that Section 6, Title 2, of the National Prohibition Act, has no bearing upon the present situation. That section is intended to regulate **medicinal liquors**, and requires permits for the transportation of spirits in connection with their manufacture and sale and consumption for medicinal purposes. No such use is contemplated of the liquor involved in the Corneli case or the Ghio case or the present case, so that the same does not fall within the purview of Section 6, or any other section, of the National Prohibition Act, other than section 33, which specifically permits the possession and consumption of liquors in a private dwelling, provided such liquor is for use only for the personal consumption of the owner thereof, and his family residing in such dwelling, and of his bona fide guests when entertained by him therein. The right to remove such liquor from the place where it is lawfully deposited to the dwelling of the owner is necessary for the enjoyment by him of the right of personal consumption in his private dwelling, as specifically authorized by Section 33 of the Act. No permit is required by the statute for such removal, and it is to be noted that the Supreme

Court, in the Street case, did not consider that the absence of such permit would affect the right of the owner to possess and remove the liquor stored in the warehouse. Furthermore, if Congress is not authorized to prohibit the removal of liquor from a lawful place of deposit to the owner's dwelling, it cannot indirectly accomplish the same result with the consequent confiscation of the complainant's property, by the oblique method of requiring permits for such removal, which permits the prohibition officials are directed to refuse. In other words, if he has a right to remove the spirits to his home from the Government Bonded Warehouse, this right cannot be nullified by the simple expedient of withholding a permit if one is required for such removal.

III.

Warehouse receipts for distilled spirits in bond are and were on October 2nd, 1919, negotiable instruments, and title to the spirits passed with the sale and delivery of the receipts. The War Time Prohibition Act did not prohibit sales of such receipts. The War Time Prohibition Act was terminated by the joint resolution passed by Congress and approved by the President March 3rd, 1921, and know as "Public Resolution No. 64—66th Congress."

Warehouse receipts for distilled spirits in bond were, prior to the passage of the National Prohibi-

tion Act, and are now negotiable instruments, and title to the spirits called for in the receipt passes by the sale and delivery of the receipt (Taney v. Bank, 232 U. S. 138, 167 Fed. 689, 700; Brown v. Maryland, 12 Wheat, 419, 447). The War Time Prohibition Act did not destroy the negotiability of warehouse receipts nor affect the right to purchase and sell same.

The War Time Prohibition Act was passed for the alleged purpose of "conserving the man power of the nation, and to increase efficiency in the production of arms, munition, ships, food and clothing for the army and navy. * * *" The statute then provided: "That after June 30, 1919, and until the conclusion of the present war and thereafter until the termination of demobilization * * * no distilled spirits held in bond shall be removed therefrom for beverage purposes" (Comp. St. Ann. Supp. 1919, 3115 11/12f). Obviously this statute was not intended to apply to the purchase during the period in question of liquor in a bonded warehouse, with a view of withdrawing the same after the termination of the period of war time prohibition. Such purchase could have no harmful effect upon the man power of the nation or upon its efficiency in the production of raw material. The language of the statute clearly indicates that it was the intention of the statute that after the war was over, that all persons

who had liquor in a bonded warehouse could remove the same for beverage purposes; and in construing this statute it must be remembered that this statute was not passed with reference to the National Prohibition Act, but it was supposed when this statute was passed that there would be a period between the termination of this statute and the beginning of the National Prohibition Act. Indeed, the National Prohibition Act was not passed until the following October, and could not take effect until the 20th of January, 1920. Furthermore, the statute simply imposed penalties upon the sale of liquor, but did not prevent the passage of title under such sale, nor provide for the confiscation of liquor so sold. Nevertheless, such confiscation would now result if the complainant was denied the right to the lawful use of spirits after the war time ban has been lifted.

It is no answer to this contention to say that the appellant can sell his barrel of distilled spirits for medicinal purposes, and therefore the value of his property will not be confiscated. The prevention of his use of the distilled spirits for the very purposes for which he purchased it, namely, as a beverage for himself, his family and his bona fide guests, while being entertained at his house, is as much a confiscation as depriving him of the money value of the same. When he purchased this barrel of distilled spirits in bond he did not purchase it

to make a profit out of it, or for its present or future market value. He purchased it for use as a beverage; to deprive him of that use is clearly a confiscation of the same.

It is a matter of common knowledge that the only possibly way to acquire title to distilled spirits in a Government Bonded Warehouse is through the purchase of a certificate therefor, and when that certificate is purchased the title of the owner thereof in the distilled spirits is absolutely perfect, subject, however, to the Government tax, the storage charges and the insurance charges. There is no other way to acquire the original title at any time to distilled spirits, from the time same are distilled up to the time the spirits are taken out of a Government Bonded Warehouse.

As a matter of fact, as soon as a distiller has distilled the spirits it is put in barrels, which are numbered, and which are registered at the office of the Collector of Internal Revenue, and copies of the registration are entered upon the books of the distiller and the books of the Government. When the distiller sells to a customer he issues to the customer a certificate for the spirits purchased, and before the customer can take same out of the Government Bonded Warehouse he is, under the law, compelled to pay the Government tax and receive an order on the distiller to withdraw the same, and have the Govern-

ment officials place upon the barrel the canceled Government stamps, and he must also surrender the warehouse certificate for cancellation before withdrawal.

The War Time Prohibition Act was terminated and repealed by Public Resolution, No. 64-66 Congress (H. J. Res. 382). This was a joint resolution passed by Congress and was signed and approved by the President on March 3rd, 1921, a copy of which we print in the appendix to this brief.

RESUME.

There is no question but what complainant's liquor is property and the right to use, possess and enjoy same is property within the meaning of that term as used in the Fifth Amendment to the Constitution of the United States. If the National Prohibition Act denies to complainant the right to transport same to his private dwelling for lawful consumption therein, then the act to that extent is void. The right of possession is one of the chief incidents of property. It is clear that the delivery and transportation by complainant of his distilled spirits from bond to his private dwelling for lawful consumption therein as authorized by Section 33, Title II of the National Prohibition Act is not a "delivery" and "transportation" within the meaning of the third section of that act.

Congress in passing the National Prohibition Act was concerned about preventing the manufacture, sale and transportation of distilled spirits for beverage purposes in the future and was not concerned about the consumption of distilled spirits as a beverage which were manufactured and owned prior to the effective date of the Eighteenth Amendment and the effective date of the National Prohibition Act. Neither the Amendment nor the Act prevents the use for beverage purposes of spirits manufactured and owned prior to their effective dates. In fact, Section 33, Title II of the Act specifically authorizes the use of such spirits for beverage purposes in the private dwelling of the owner. Anything else would have been confiscation of such lawfully acquired property. The Eighteenth Amendment gave no power to Congress to prevent the use for beverage purposes of spirits manufactured and owned prior to its effective date, and besides this the Amendment is expressly prospective in its operation.

Congress in framing the Amendment was silent about its legislative power to prohibit the use for beverage purposes after the Amendment became effective of spirits manufactured and owned before its adoption. Had it inserted the word "use" in Section 1 of the Amendment, then the consumption of spirits as a beverage would have applied to all liquors. This, however, would have been confiscation without com-

pensation and would not have been "due process." Congress framed this Amendment and has construed its own work. It has not and could not under its powers contained in the Amendment prohibit the use or consumption of spirits as a beverage, manufactured and owned prior to its effective date. This question is discussed at length in our brief in the Ghio case, No. 175 of this docket.

The National Prohibition Act authorizes the transportation of distilled spirits lawfully acquired before its effective date from the government bonded warehouse to the private dwelling of the owner for beverage consumption therein by himself, the members of his family and his bona fide guests when entertained by him therein. Section 37 of Title II of the Act reads as follows:

> "Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this Act, or prevent the transportation of such liquor to such warehouses * * * and permits may be issued therefor."

There is no limitation placed on the purpose for which liquor manufactured prior to the taking effect of the Act may be transported to and stored in Government Bonded Warehouses, consequently it includes liquor for beverage as well as non-beverage purposes. The only limitation imposed is, that the spirits must have been manufactured prior to the taking

effect of the Act, and its use as a beverage is immaterial and it is also immaterial whether it is to be transported from a private dwelling or other place of lawful storage or to be removed from one bonded warehouse to another. If it can be transported under the Act to the Government Bonded Warehouse, of course, a like power is implied to re-transport same when desired to the private dwelling or any other place where the same may be lawfully stored. Congress in passing this section in the Act was not attempting to practice a deceit or to mislead owners to part with the possession of their distilled spirits to the end they might not repossess them. This section has been exhaustively discussed in the Corneli and Ohio cases, No. 174 and No. 175 of this docket, and we will not repeat that argument here.

Distilled spirits may be lawfully kept or deposited in Government Bonded Warehouses, private warehouses and dwellings, outside of these places where the same may be kept for lawful sale under the Act. There is but one place, however, where distilled spirits may be used and consumed as a beverage, and that place is the private dwelling of the owner.

After the consumption of the spirits manufactured prior to the effective date of the Eighteenth Amendment, then the use of distilled spirits, as a beverage, will be at an end. This is true because the Eighteenth Amendment conferred no power on Congress to prevent the consumption of such spirits as a bev-

erage, and any act of Congress preventing such use of such spirits would be invalid because violative of the Fifth Amendment to the Constitution.

Warehouse receipts for distilled spirits in bond were, prior to the passage of the National Prohibition Act, negotiable instruments, and now by the provisions contained in the Proviso in Section 3, Title II of the Act they are still negotiable instruments and title to the spirits called for by the receipt passes by the sale and delivery of the receipt. By authorizing the sale of the receipt by necessary implication, it authorizes the delivery and transportation of the property to the private dwelling of the owner for lawful consumption.

For the reasons herein expressed, we respectfully ask that the order, judgment and decree below be reversed and the cause remanded with directions to overrule the motion to dismiss and to grant the relief prayed for by appellant in his amended bill, and for any and all other orders and directions which this Honorable Court may deem necessary.

Respectfully submitted,

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J. WALLACE BRYAN,
JAMES T. O'NEILL,
GLENDY B. ARNOLD,
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Attorneys and Counselors for Appellant.

APPENDIX.

[Public Resolution No. 64—66th Congress.]
[H. J. Res. 382.]

Joint Resolution Declaring that certain Acts of Congress, joint resolutions, and proclamations shall be construed as if the war had ended and the present or existing emergency expired.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in the interpretation of any provision relating to the duration or date of the termination of the present war or of the present or existing emergency, meaning thereby the war between the Imperial German Government and the Imperial and Royal Austro-Hungarian Government and the Government and people of the United States, in any Acts of Congress, joint resolutions, or proclamations of the President containing provisions contingent upon the duration or the date of the termination of such war or of such present or existing emergency, the date when this resolution becomes effective shall be construed and treated as the date of the termination of the war or of the present or existing emergency, notwithstanding any provision in any Act of Congress or joint resolution providing any other mode of determining the date of such termination. And any Act of Congress, or any provision of any such Act,

that by its terms is in force only during the existence of a state of war, or during such state of war and a limited period of time thereafter, shall be construed and administered as if such war between the Governments and people aforesaid terminated on the date when this resolution becomes effective, any provision of such law to the contrary notstanding; excepting, however, from the operation and effect of this resolution the following Acts and proclamations, to wit: Title 2 of the Act entitled "The Food Control and District of Columbia Rents Act," approved October 22, 1919 (Forty-first Statutes, page 297), the Act known as the Trading with the Enemy Act, approved October 6, 1917 (Fortieth Statutes, page 411), and all amendments thereto, and the First, Second, Third, and Fourth Liberty Bond Acts, the Supplement to the Second Liberty Bond Act, and the Victory Liberty Loan Act; titles 1 and 3 of the War Finance Corporation Act (Fortieth Statutes, page 506) as amended by the Act approved March 3, 1919 (Fortieth Statutes, page 1313), and Public Resolution Numbered 55, Sixty-sixth Congress, entitled "Joint resolution directing the War Finance Corporation to take certain action for the relief of the present depression in the agricultural sections of the country, and for other purposes," passed January 4, 1921; also the proclamations issued under the authority conferred by the Acts herein excepted from the effect and operation of

this resolution: *Provided, however,* That nothing herein contained shall be construed as effective to terminate the military status of any person now in desertion from the military or naval service of the United States, nor to terminate the liability to prosecution and punishment under the selective service law, approved May 18, 1917 (Fortieth Statutes, page 76), of any person who failed to comply with the provisions of said Act, or of Acts amendatory thereof: *Provided, further,* That the Act entitled "An Act to amend section 3, title 1, of the Act entitled 'An Act to punish acts of interference with foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917 (Fortieth Statutes, page 217), and for other purposes," approved May 16, 1918 (Fortieth Statutes, page 553), be and the same is hereby, repealed, and that said section 3 of said Act approved June 15, 1917, is hereby revived and restored with the same force and effect as originally enacted.

Nothing herein contained shall be held to exempt from prosecution or to relieve from punishment any offense heretofore committed in violation of any Act hereby repealed or which may be committed while it remains in force as herein provided.

Approved, March 3, 1921.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 422.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

Appeal from the District Court of the United States for the District of Maryland.

REPLY AND SUPPLEMENTAL BRIEF FOR APPELLANT.

J. WALLACE BRYAN,
[illegible] B. JONES,
[illegible] T. O'NEILL,
Attorneys and Counselors for Appellant.

(28,363)

The Daily Record Co., Print., Baltimore, Md.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND, APPELLEE.

Appeal from the District Court of the United States for the District of Maryland.

REPLY AND SUPPLEMENTAL BRIEF FOR THE APPELLANT.

There Is No Provision in the Volstead Act Specifically Prohibiting the Removal of the Liquor Now Sought.

The briefs filed on behalf of the Government by Assistant Attorney-General Willebrandt, Solicitor General Beck and Amicus Curiae Wheeler, present its contentions in the most favorable light possible, but serve only to emphasize the fundamental soundness of the appellant's position.

They bring into clear view the vital and unescapable fact that neither the Eighteenth Amendment nor the Vol-

stead Act specifically forbids the removal of lawfully acquired liquor from a Government bonded warehouse to the owner's home for lawful consumption by himself, his family and his bona fide guests. This really concludes the case, for such removal is clearly lawful unless definitely forbidden by statute, and not (as suggested by the Government) unlawful unless definitely permitted by the Volstead Act. In the absence of such definite statutory prohibition, therefore, the removal remains lawful, and no court or officer is authorized to insert in an existing statute an implied prohibition that is not embraced in the language actually used

The case of Street vs. Lincoln Safe Deposit Company, 245 U. S. 88, directly decides that the removal now sought is legal unless specifically *prohibited* by the Volstead Act, even though not expressly *permitted* by it. Neither the storage of liquor in a private warehouse nor its removal therefrom to the owner's dwelling is specifically *permitted* by the Volstead Act, but this Court held such possession and removal to be lawful because not specifically *prohibited*. The Court says:

> "Thus it is plain that in the sections of the Act relied upon there is *no specific prohibition* against the storage of liquors, under the circumstances admitted to exist in this case, and we find *no other provisions by which such a custody is rendered unlawful.*"
>
> "That transportation of the liquors to the home of the appellant, under the admitted circumstances, is *not such as is prohibited by* the section is * * * apparent * * *."

The omission of such direct prohibition becomes all the more striking when we consider that the Wartime Prohibition Act *did* specifically provide that "no distilled spirits held in bond shall be removed therefrom for bev-

erage purposes except for export." Apt statutory language to accomplish this purpose was thus conspicuously available when the Volstead Act was framed. The omission of a similar clause from the Volstead Act can only be construed as leaving such removal for lawful uses unmolested, whether the omission were intentional or inadvertent, unless an explicit prohibition on such removal is found in other language of the statute.

The Government relies for this prohibition on Section 3 of the Volstead Act, which provides:

> "No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act * * *."

This language, however, does not prohibit the removal sought by the cases at bar. The only words at all pertinent are "transport," "deliver" and "possess." But the "possession" of lawfully acquired liquor in a Government bonded warehouse or in the owner's private dwelling is not forbidden. Again, the case of Street vs. Lincoln Safe Deposit Company, 245 U. S. 88, directly decides that the removal of liquor from a lawful place of storage to the owner's home for lawful use is not such "transportion" as is prohibited by the statute. And the same case decides also that for a warehouseman to "permit the owner to have access to the liquors to take them to his dwelling for lawful use is not a delivery of them within the meaning of this third section."

It is thus entirely clear that this section does not forbid such removal of his lawfully acquired liquor by the appellant. There is no other section that imposes such prohibition. It must follow accordingly that the removal

is still as lawful as it undoubtedly was before the Volstead Act was passed.

The Government, however, seeks to supply the missing prohibition by inference, drawn largely from the alleged intent on the part of the framers of the Eighteenth Amendment and the Volstead Act to prohibit the *consumption* of liquor for beverage purposes, although "consumption" is not mentioned in either the Amendment or the statute. The inevitable wail is raised that a decision that the appellant is entitled to have his liquor for an undoubtedly lawful purpose might enable other persons to obtain liquor from bond for unlawful purposes—as if that furnished any reason for denying the appellant his plain rights. And an attempt is made to distinguish the Street Case from the cases at bar by citing certain differences in some of the facts involved, none of which differences is at all pertinent to the present issue.

It might be a sufficient answer to suggest that mere inferences or conjectural inconveniences furnish no sufficient reason for reading into the Volstead Act language not put there by Congress in order to confiscate the appellant's lawfully acquired property "by preventing or unduly interfering with (its) consumption by the owner." However, the Government's more important contentions will be definitely answered.

(1) Neither the Eighteenth Amendment Nor the Volstead Act Forbids the Consumption of Liquor.

The suggestion that the Eighteenth Amendment and the Volstead Act should be construed as forbidding the *consumption* of liquor for beverage purposes is entitled to short shrift. Whatever may have been the undisclosed purposes of those responsible for this legislation, the fact remains that the Eighteenth Amendment forbids,

and authorized Congress to forbid, only *manufacture, transportation* and *sale*—not consumption. Even the framers of the Volstead Act did not venture to include consumption or use in its inhibitions.

It is true that Section 3 says that "all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented." But this is not a direct prohibition of such use. And even if it be conceded that such a direction to reverse the ordinary canons for the construction of a highly penal statute is binding on any court, it could only require the court to resolve against beverage use any reasonable doubt as to the scope of specific prohibitions that are fairly susceptible of that construction. It certainly does not authorize any officer or court to apply a prohibition that cannot be included in any reasonable meaning of the language actually used.

The suggestion that constitutional prohibition be construed to forbid the use and consumption of liquor lawfully owned prior to the passage of the Eighteenth Amendment carries the avowed purposes of those in control of prohibition enforcement far beyond anything heretofore attempted by them. It practically asks the court to amend both the Eighteenth Amendment and the Volstead Act to prohibit all beverage use of liquor, in the very teeth of the language of both of them.

It is respectfully submitted that this policy has already been carried too far, and that the time is ripe for holding the enforcement authorities to a closer adherence than many of them have heretofore shown to the plain language of the very law which they are supposed to administer.

The general intent of the law in respect of liquor owned before prohibition was clearly expressed by this Court in the following language from the Street Case:

> "The Congress was concerned with the great problem of preventing the *manufacture and sale of* intoxicating liquors for beverage purposes *in the future* and it seems to have given but slight attention to the consumption of such relatively small amounts of such liquors as might be in existence in private ownership and intended for consumption by the owner, his family or his guests, when the Amendment and the Act should take effect."

This passage, it will be noted, is not confined to liquor in private dwellings or private warehouses, but applies to all existing liquor *"in private ownership" intended* for personal consumption, without reference to its location when the act was passed.

(2) This Case Is Governed by the Street Case.

The Government attempts to distinguish the Street Case from the cases at bar on the ground that the liquor there involved was stored in a private warehouse, whereas the liquor involved in the case at bar is stored in a distiller's bonded warehouse. In support of this supposed distinction, the Government cites in detail various regulations and restrictions imposed by statute on bonded warehouses and the removal of liquor therefrom.

This contention is answered by a consideration of the purpose of these regulations and restrictions. Their sole object is to protect the Government in the collection of its taxes on the liquor stored in bonded warehouses. Every regulation cited by the Government relates to this one end. When the tax is paid, the purpose has been fulfilled, and the Government has no further interest in and exercises no further control over the liquor, but stands

aside and permits it to be removed. These restrictions, therefore, do not in any just sense qualify the certificate holder's constructive possession of the liquor, but simply prevent the removal of the liquor unitl the tax is paid. In all essentials, except in respect of the regulations for enforcing the obligation to pay taxes, the owner's possession of liquor in bond is of the same quality as the owner's possession of liquor in an ordinary warehouse. Even in the latter case, the owner has not the physical custody of his goods, for these are not accessible to him until the warehouse doors are unlocked; and his access to the goods is usually subject to restrictions imposed for the protection of the other property in the warehouse, and is certainly subject to the payment of storage charges, for which the warehouseman has as direct a lien as the Government's lien for its taxes. Differences in detail, therefore, cannot obscure the outstanding fact that liquor in a bonded warehouse is held in a lawful place of storage for its owner, who is entitled to take and remove the same upon payment of the tax; and in this respect the situation is not different in substance from liquor in a private warehouse, which the owner similarly has the right to take and remove in accordance with the warehouse company's regulations and upon payment of its charge for storage.

To cite restrictions on the removal of liquor from bond imposed by the Government for the protection of its taxes as a reason for denying to the appellant after payment of the tax the right of access to the warehouse for the purpose of removing his property would utterly distort these restrictions from their character as mere administratrive tax regulations, and cause them to be employed as a bald excuse for confiscating the appellant's property. Surely, such an intention cannot justly be ascribed to Congress, and could not be constitutionally sustained.

The controlling similarity of the case at bar to the Street Case in all substantial particulars is fully shown on pages 21-30 of the brief heretofore filed on behalf of the appellant in this case (Number 428), to which the attention of the Court is respectfully requested. As therein pointed out in detail, no distinction can be suggested between a private warehouse and a bonded warehouse that is pertinent to the issues involved in the present case, and the reasoning of the court in the Street Case is entirely applicable to the case at bar, with this difference in favor of the instant case, that no question can be raised as to the legality of the possession of liquor held in a bonded warehouse. In every other respect, the two cases are entirely parallel. The constructive possession of the appellant in the case at bar is just as complete as the constructive possession which the appellant had in the Street Case, and once the taxes are paid on the appellant's liquor, and the Government's interference with its removal is withdrawn, it will be necessary only for those in charge of the bonded warehouse to permit the appellant to have access to and take away his barrel of liquor, which is all that the warehouseman had to do in the Street Case. Any suggestion of a difference based on the fact that the appellant's liquor in the Street Case was stored in a room to itself, whereas the liquor in the present case is presumably stored in a space not partitioned off, is merely meticulous and cannot affect the principles involved. These points being established, it is obvious that the removal of the liquor from a bonded warehouse to the appellant's home for lawful use will be no more a "transportation" such as is forbidden by the Eighteenth Amendment and the Volstead Act than was the similar removal of the liquor from the private warehouse to the owner's dwelling which was sustained in the Street Case.

The appellant submits accordingly that the distinctions attempted to be drawn by the Government between the two cases are without significance, and amount practically to an attempt to induce this Court substantially to reverse its holding in the Street Case, or to limit its proper application by merely trivial circumstances.

(3) The Argument of Convenience Refuted.

The Government makes much of the alleged danger that the appellant's success in this case might enable other persons to divert to unlawful uses some of the liquor now stored in bonded warehouses. This contention, however, is based upon a mistaken assumption, and would have no force even if it were sound.

The Government admits that the liquor involved in the present case was lawfully acquired for private consumption in the dwelling of the owner, as specifically permitted by the Volstead Act, and not for sale or other unlawful use. A decision in favor of the appellant, therefore, would do no more than establish his right, and the right of others similarly situated, to withdraw their liquor for a like lawful purpose.

A similar suggestion of the danger of unlawful use that might result from protecting the complainant in his plain rights was made in the Street Case, but was answered by this Court in the following terms:

> "Clearly there is like administrative power under the act to so regulate the transfer of such stored liquors from a warehouse to the dwelling of the owner as to prevent their being used to evade the prohibitions of the act or to substantially interfere with its effective enforcement."

This language is entirely pertinent to the case at bar, and would enable the prohibition authorities to throw such safe-guards around the liquor here involved, and other liquor in like situation, as would minimize the danger suggested.

Conceding for the purpose of the argument, however, that if the present appellant's rights are enforced a certain amount of liquor now in bonded warehouses might be illegally consumed, it is respectfully submitted that this circumstance cannot justify the Government in asking this Court to insert in the Volstead Act a prohibition which was not inserted by Congress. The argument of convenience cannot confer legislative power on either courts or administrative officers to the extent of authorizing them to read into a statute language which was not put there by the body which passed it.

Furthermore, it is submitted that an argument of this character is entirely vicious in principle. Governmental interference with private rights is carried to an intolerable extent when a citizen is denied his plain rights, and his property is virtually confiscated, on the ground that protecting him in his rights might enable other citizens to evade the law. It is respectfully submitted that a denial of fundamental rights on any such grounds as this is fraught with consequences much more dangerous to the body politic than is a possible slight and temporary increase in the illegal consumption of intoxicating liquor.

The foregoing considerations answer the major arguments presented on behalf of the Government. There are certain other features of the case, however, which deserve brief comment

(4) The Purchase of Certificates for Whiskey in Bonded Warehouses Was Not Forbidden by the Wartime Prohibition Act.

The Government suggests, though it does not seriously argue, that the purchase during the effective period of the Wartime Prohibition Act of a warehouse receipt for liquor stored in a bonded warehouse was forbidden by that statute. In support of this suggestion, the Government quotes (Brief, pages 18-19), a garbled and misleading fragment of an opinion rendered by the Attorney General of the United States on August 21, 1919.

The fact is that the Attorney General specifically ruled that the sale of such receipts was *not* prohibited by the Wartime Prohibition Act. His language is as follows:

> "I am of the opinion that the sale of warehouse certificates on whiskey held in bond, and subject to the payment of tax before it can be moved, is *not* a sale of whiskey for beverage purposes within the meaning of the War Prohibition Act and is *not* prohibited."

In other words, the Attorney General's holding *was just the opposite* of that which the Government's brief attributes to him. The first part of the passage quoted by the Government was only *part* of a sentence dealing with receipts for liquor in a *private* warehouse. (The opinion is printed in full as an appendix to this brief.) The suggestion that the purchase of a bonded warehouse receipt was not permitted during the effective period of the Wartime Prohibition Act is further answered on pages 36 to 39 of the brief heretofore filed on behalf of the appellant in this case, to which the Court's attention is respectfully invited.

(5) The Purchase of the Certificate Vested in the Appellant Complete Title to and Consructive Possession of the Wiskey Itself.

It is entirely clear that the purchase and delivery to the complainant of the certificate mentioned in the bill of complaint vested in him the legal title to and constructive possession of the whiskey therein described, as fully as if the whiskey itself had been delivered to him, under both the common law and the express terms of the Uniform Warehouse Receipts Act.

It has long been settled that the endorsement and delivery of a receipt or other document for goods in a warehouse transfer to the purchaser the legal title and constructive possession of the goods themselves. The delivery of the evidence of title is equivalent to the delivery of the property.

Gibson vs. Stevens, 8 How. (U. S.) 384.

This principle has been codified in the Uniform Warehouse Receipts Act (which was in force in Maryland where the liquor in question was stored at the time the complainant purchased his receipt for the same), which provides in express terms that whether the receipt be negotiated, or transferred but not negotiated, the transferee obtains, in either case, the *title to the goods* and the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Uniform Warehouse Receipts Act, Secs. 41 and 42.
See Annotated Code of Md., Art. 14A, Secs. 41 and 42, p. 327.

These principles apply with full force to receipts for whiskey stored in a bonded warehouse.

Thus, in Re MILLER PURE RYE DISTILLING COMPANY, 176 Fed. 606, it was directly decided that a distilling company's warehouse receipts represent the property itself, and their transfer to a purchaser or pledgee operates as a delivery of the whiskey called for thereby, subject to the payment of the tax.

This case was affirmed on appeal under the name of

Taney vs. Penn. Nat. Bank, 187 Fed. 689.
Same Case, 232 U. S. 174.

The application of the Uniform Warehouse Receipts Act to whiskey certificates was impliedly recognized by the Court of Appeals of Maryland in STATE VS. GAMBRILL, 115 Md. 506.

(6) The Appellant's Rights Are Not Affected by His Failure to Report His Ownership of the Whiskey Covered by His Certificate.

The Government suggests that the appellant under Section 33, Title 2, of the Volstead Act, should have reported within ten days after the effective date of the Eighteenth Amendment the kind and amount of intoxicating liquors represented by his certificate. The Government does not, however, explain the bearing of this suggestion, and does not cite any provision in the statute to the effect that failure to make such report deprived the appellant of his rights in the liquor.

This inquiry need not be prolonged, however, for the suggestion that liquor in bonded warehouses was required to be reported under Section 33 is palpably absurd. The obvious purpose of this requirement was simply to enable the prohibition authorities to keep track of liquor in private hands. There would be no reason for demanding reports of liquor in bonded warehouses, since the Govern-

ment already has an accurate record of all liquors so held, and exercises close supervision over both warehouse and contents. Most of the liquor in bonded warehouses was and is represented by certificates outstanding in private hands, but apparently no reports of such liquor have ever been made or required. If the Government's contention should now be sustained, therefore, it would probably result in confiscating the greater part of the liquor in bond.

Even the possession of liquor by a person not legally permitted to possess it is only prima facie evidence that such liquor is being kept for disposition in violation of the statute, but this presumption is rebuttable (Street vs. Lincoln Safe Deposit Company). Certainly a more drastic rule should not be applied as against liquor in bonded warehouses under Governmental supervision where it is lawfully entitled to be kept.

(7) An Intention Virtually to Confiscate the Appellant's Whiskey by Preventing Its Removal for Lawful Use Cannot Be Rested on Mere Inference.

The Government cites Section 37 and other sections of the Volstead Act permitting the removal of liquor from bond for certain purposes and uses, and argues that these provisions negative an intent on the part of Congress that such liquor should be withdrawn for any other purposes.

To this it is answered that the prohibition of the removal now sought, and the virtual confiscation of the appellants' property which would result therefrom, cannot be sustained by inference drawn from provisions dealing with other matters, or from similar negative circumstances. As several times pointed out, *none* of the sections cited by the Government *definitely forbids* the removal now sought, and such prohibition cannot be sup-

plied by inference as to a supposed intention that Congress has never expressed. The appellant is entitled to his property *unless* its removal is *forbidden* in the clear terms required of a penal or criminal statute, and there is no such prohibition in the Volstead Act.

In the language of this Court in the Street Case:

> "An intention to confiscate private property, even in intoxicating liquors, will not be raised by inference and construction from provisions of law which have ample field for their operation in effecting a purpose clearly indicated and declared."

The Government's argument on this point likewise finds its conclusive answer in the Street Case. The Court there suggests:

> "It may be that the custody of liquors by a warehouse company was thus not declared to be unlawful because the writers of the Act did not have such a case in mind, but it was more probably because Congress would not consent to allow lawful possession and use of liquors in dwellings having storage facilities for them, while denying the only possible means of preserving and protecting such liquors to persons with less commodious homes * * *."

The Government attempts to avoid the effect of this language by omitting to quote in its briefs the second half of the passage, and claiming that Section 37, Title II, and Section 6, Title III, of the Volstead Act indicate that Congress *did* have in mind liquor in bonded warehouses.

This latter circumstances, however, only strengthens the appellants' position. Since Congress had its attention directed specifically to liquor in bond, and also had before it the express language of the Wartime Prohibition Act unequivocally forbidding its removal for beverage purposes, the failure of Congress to incorporate a similar

prohibition in the Volstead Act, or any other language that can possibly include such prohibition, leaves no alternative but to conclude that the removal now sought is not forbidden.

The Court's suggestion regarding the scarcity of storage facilities in private dwellings is an entirely practical one, and fully accounts for the omission of any provision in the Volstead Act prohibiting the storage of lawfully-owned pre-prohibition liquor in either private or *bonded* warehouses until the owner is ready to remove them to his home for lawful uses. A bonded warehouse is the most natural, convenient and safe place for the storage of liquor, and liquor in such warehouses is more easily kept track of than liquor in private storage. There is thus no reason why storage in and removal from private warehouses should be permitted, but storage in and removal from bonded warehouses should be forbidden. On the contrary, every consideration of practical enforcement of prohibition is in favor of the handling of liquor from bonded rather than private warehouses.

(8) If Construed to Forbid the Removal of the Liquor Now Sought, the Volstead Act Is to That Extent Unconstitutional.

The constitutionality of the Volstead Act, if so construed as virtually to confiscate lawfully acquired liquors by preventing or unduly interfering with their consumption by the owners, is discussed in the appellants' main briefs. As stated by Mr. Justice McReynolds: "The Eighteenth Amendment gave no such power to Congress. Manufacture, sale and transportation are the things prohibited,—not personal use" (Street vs. Lincoln Safe Deposit Company).

The Government suggests that there is no confiscation because the appellant may still sell his certificate and

enable the liquor to be withdrawn for non-beverage purposes. As shown in the appellant's briefs, however, it is a virtual taking of the appellant's property to deny him its possession and use for the very purpose for which it was acquired, and this is beyond the scope of any power conferred on Congress by the Eighteenth Amendment. The cases cited by the Government do not meet the issue, for they were concerned with the police power of the state to regulate intoxicating liquors; and under this power the state may do anything that is not specifically forbidden by the Federal Constitution. The power of Congress, of course, is governed by other considerations, for Congress is permitted to exercise only powers specifically granted to it; and since the power of Congress to deal with intoxicating liquor is granted by the Eighteenth Amendment, which forbids only manufacture, transportation and sale, the power of Congress to confiscate liquors lawfully acquired previously to the passage of the Amendment cannot be established by citing cases upholding similar action by the states.

The Street Case is again pertinent at this point:

> "Since here, as always, the purpose of Congress in enacting a law is of importance in determining the meaning of it, it is noteworthy that Title II of the Volstead Act was passed under the grant of power to enforce the first section of the Eighteenth Amendment to the Constitution of the United States, which prohbits the manufacture, sale and transportation of intoxicating liquors for beverage purposes, but does not indicate any purpose to confiscate liquors lawfully owned at the time the amendment should become effective and which the owner intended to use in a lawful manner."

In conclusion, it is submitted that none of the techicalities cited on behalf of the Government in its effort to deprive the appellant of his property can obscure his clear

right, as established in terms by the Street case, to remove his lawfully-owned liquor from a lawful place of storage to his dwelling for lawful use. In all substantial particulars that have any pertinence to the issue, the present case is identical with the Street Case and is governed by the just principles which that case established.

The decree appealed from should accordingly be reversed, with directions to grant the relief prayed, under such safeguards as the Court may deem proper to prevent the diversion of the liquor to unauthorized purposes.

Respectfully submitted,

J. WALLACE BRYAN,
JULIAN S. JONES,
JAMES T. O'NEILL,

Attorneys and Counselors for Appellant.

APPENDIX.

See Opinions of The Attorney General of The United States Advance Sheets for 1919, page 28.

Department of Justice,

August 21st, 1919.

Sir:

I have the honor to acknowledge receipt of your letter of August 13th, requesting an opinion as to whether the sale of Warehouse certificates, representing whiskey, constitutes a violation of the War Prohibition Act. (40 Stat. 1046.)

Ordinarily warehouse receipts are subject to sale, and when sold and delivered, pass title to the property represented by them as fully and completely as if the property itself was delivered. If the tax on whiskey has been paid and it has been removed from the warehouse of which the Government has control and stored in an ordinary warehouse, the sale of the warehouse receipts would be a sale of the whiskey, and where such sale is made for beverage purposes, that is not specifically for some non-beverage purpose, it would be a clear violation of the War Prohibition Act.

I assume, however, that this is not the character of certificate referred to in your letter. I presume you refer to certificates representing whiskey held in bond, and which cannot be removed from the warehouse until the tax is paid. Under those conditions the purchaser of the certificate acquires all the rights of the seller, but these rights are simply to remove the whiskey from the warehouse upon the payment of the tax and compliance with all the

regulations of the Bureau of Internal Revenue. In other words, he acquires the whiskey subject to the rights of the Government.

The War Prohibition Act prohibits, after June 30th, 1919, not only the *manufacture* and *sale* of whiskey, but also its *removal* from bond for beverage purposes, except for export. Since this law became effective, therefore, the purchaser of such a certificate becomes the owner of the whiskey, not only subject to the rights of the Government, but without the right to remove it for beverage purposes, except for export, as long as the War Prohibition Act remains in force. The sale of the certificates, therefore, expressly negatives the idea that it is a sale for beverage purposes, or at least for the purpose of *using* or *selling* the whiskey as a beverage as long as its removal for beverage purposes is unlawful.

I am of the opinion that the sale of warehouse certificates on whiskey held in bond, and subject to the payment of tax before it can be removed, is not a sale of whiskey for beverage purposes within the meaning of the War Prohiibtion Act and is not prohibited.

Respectfully,

A. MITCHELL PALMER.

To the Secretary of the Treasury,

August 21st, 1919.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 428.

WILLIAM H. BRYAN, APPELLANT,

vs.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE STATE OF MARYLAND.

Appeal from the District Court of the United States for the District of Maryland.

Filed July 26, 1921.

MOTION TO ADVANCE APPEAL.

Now comes William H. Bryan, appellant, by Julian S. Jones, J. Wallace Bryan, James T. O'Neill, Glendy B. Arnold and Elliott W. Major, attorneys and counselors for said appellant, and moves this Honorable Court to advance his appeal, case No. 428 on the docket of the court for the October Term, 1921, and make an order setting same for argument and sub-

mission on Monday, the 10th day of October, 1921, at the same time and along with the case of Charles Corneli, appellant, vs. George H. Moore, Collector of Internal Revenue, same being case No. 174 on the docket of the October Term, 1921, and the case of George J. Ghio, appellant, vs. George H. Moore, Collector of Internal Revenue, same being case No. 175 on the docket, October Term, 1921, and as reasons therefor appellant states:

1. That the said cases of Charles Corneli, appellant, No. 174, and George J. Ghio, appellant, No. 175, were on motion advanced by the Court and set for joint argument and submission on Monday, October 10, 1921; and that Glendy B. Arnold and Elliott W. Major, who are attorneys and counselors for appellants in said cases No. 174 and No. 175, are also attorneys and counselors for appellant in the instant case, No. 428, and ask that this case be advanced and argued and submitted jointly with the said Corneli and Ghio cases.

2. That the questions involved in the Corneli and Ghio cases are identical in principle with the questions involved in the case of William H. Bryan, appellant, No. 428. The appellant in each of the three cases was and is the owner of a warehouse receipt for a barrel of distilled spirits on deposit in a Government bonded warehouse of the United States, and the

distilled spirits in each case were manufactured and deposited in said Government bonded warehouses long prior to the effective date of the Eighteenth Amendment to the Constitution of the United States and the National Prohibition Act and the effective date of the War-Time Prohibition Act. Appellant in each case being the owner of the warehouse receipt seeks by his bill to remove the distilled spirits from the Government bonded warehouse, where deposited, to his private dwelling, same to be used therein for lawful purposes only.

3. Appellant Corneli in case No. 174 has owned his warehouse receipt for the barrel of distilled spirits on deposit in the Government bonded warehouse continuously since the spring of 1917, a date long prior to the effective date of the Eighteenth Amendment and the National Prohibition Act. Appellant Ghio, in case No. 175, purchased his warehouse receipt on the 28th day of February, 1920, a date after the Eighteenth Amendment and the National Prohibition Act became effective. The barrel of spirits, however, was manufactured and deposited in the Government bonded warehouse long prior to the effective date of both the Amendment and the National Prohibition Act. In the instant case William H. Bryan, appellant (case No. 428), purchased and became the owner of the warehouse receipt for the barrel of spirits de-

posited in the Government bonded warehouse on the 2nd day of October, 1919, a date prior to the effective date of the Eighteenth Amendment and the National Prohibition Act and after the enactment of the War Time Prohibition Act.

4. The argument and submission of this appeal at the same time and jointly with the Corneli case No. 174 and the Ghio case No. 175 will conserve both the time and the labor of the Court in considering and disposing of the cases.

5. The appellant, William H. Bryan, has printed his brief in this cause and has, under the rules, filed thirty (30) copies of his brief with the Clerk of this Honorable Court, and has accompanied same by proper and satisfactory proof of service of a copy of his said brief upon Robert R. Garman, United States District Attorney for the District of Maryland, counsel for the adverse parties.

6. The bill in the instant case was filed to enforce the right of the appellant, who is the bona fide owner of the warehouse receipt for one barrel of distilled spirits on deposit in the Government bonded warehouse of the United States, to remove same to his private dwelling, situated in Baltimore County in the State of Maryland and which is used as his dwelling only and to keep the same in said dwelling for the personal use of appellant, the members of his family

and his bona fide guests when entertained therein, and for such uses only in his private dwelling as is now authorized and permitted by the National Prohibition Act; and the possession of said spirits is not desired for the purpose of barter or sale or of disposing of the same in violation of any law of the United States.

7. There are many thousands of persons owning small quantities of spirits, in bonded warehouses of the United States, which, like appellant, were lawfully acquired for private consumption in their dwellings only, and who have been denied the right to take possession of their property and remove same to their private dwellings for lawful uses therein. According to actual tests and common experience the "outage" on distilled spirits on deposit in Government bonded warehouses, by leakage and evaporation, is approximately two gallons or more per barrel per-annum. The loss to appellant and to those who own distilled spirits and who are similarly situated as appellant has already been very great, and, no doubt, will extend into millions of gallons before this appeal would be reached in its regular order on the docket of this court, and an early disposition of the appeal will minimize this great and irreparable loss to appellant and other lawful owners.

8. The appellant is being denied the right to the lawful use of his property, lawfully acquired; and, being denied the right to the lawful use and enjoyment of same, his property is, by leakage and evaporation, daily being wasted, destroyed and lessened in quantity (same being in barrels and not bottled); and having been on deposit in said Government bonded warehouse for some years prior to the adoption of the Eighteenth Amendment to the Constitution of the United States and the enactment of the Volstead Act, if appellant is not permitted to remove same and take possession thereof, at an early date, a large part of his property will have been wasted and destroyed and, in effect, confiscated. The appellant is further required to pay monthly storage charges and the value of his property is being needlessly consumed by the payment of such charges.

9. In addition to these facts and reasons why this appeal should be advanced and argued and submitted at the same time and along with cases No. 174 and No. 175, the case presents questions of great public interest, and also, by reason of the taxes to be paid on withdrawal from bond, affects the revenues of the Government of the United States. The questions presented by the particular facts in this appeal, relative to the removal by the owner of his distilled spirits, lawfully acquired, from the Government bonded

warehouse to the private dwelling of appellant, to be used therein only as permitted and authorized by the "National Prohibition Act," should be specifically settled, and that at an early date, so as to save appellant and other owners similarly situated from great and irreparable property loss.

Respectfully submitted,

JULIAN S. JONES,
J. WALLACE BRYAN,
JAMES T. O'NEILL,
GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Attorneys and Counselors for Appellant.

I concur in above motion

Jas. M. Beck,

Solicitor General

NOV 12 1921
WM. R. STANSBURY
CLERK

No. 548.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

WALTER A. EASTES, APPELLANT,

VS.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Filed September 23, 1921.

MOTION TO ADVANCE APPEAL.

ELLIOTT W. MAJOR and
JOHN T. BARKER,
Attorneys and Counselors for Appellant.

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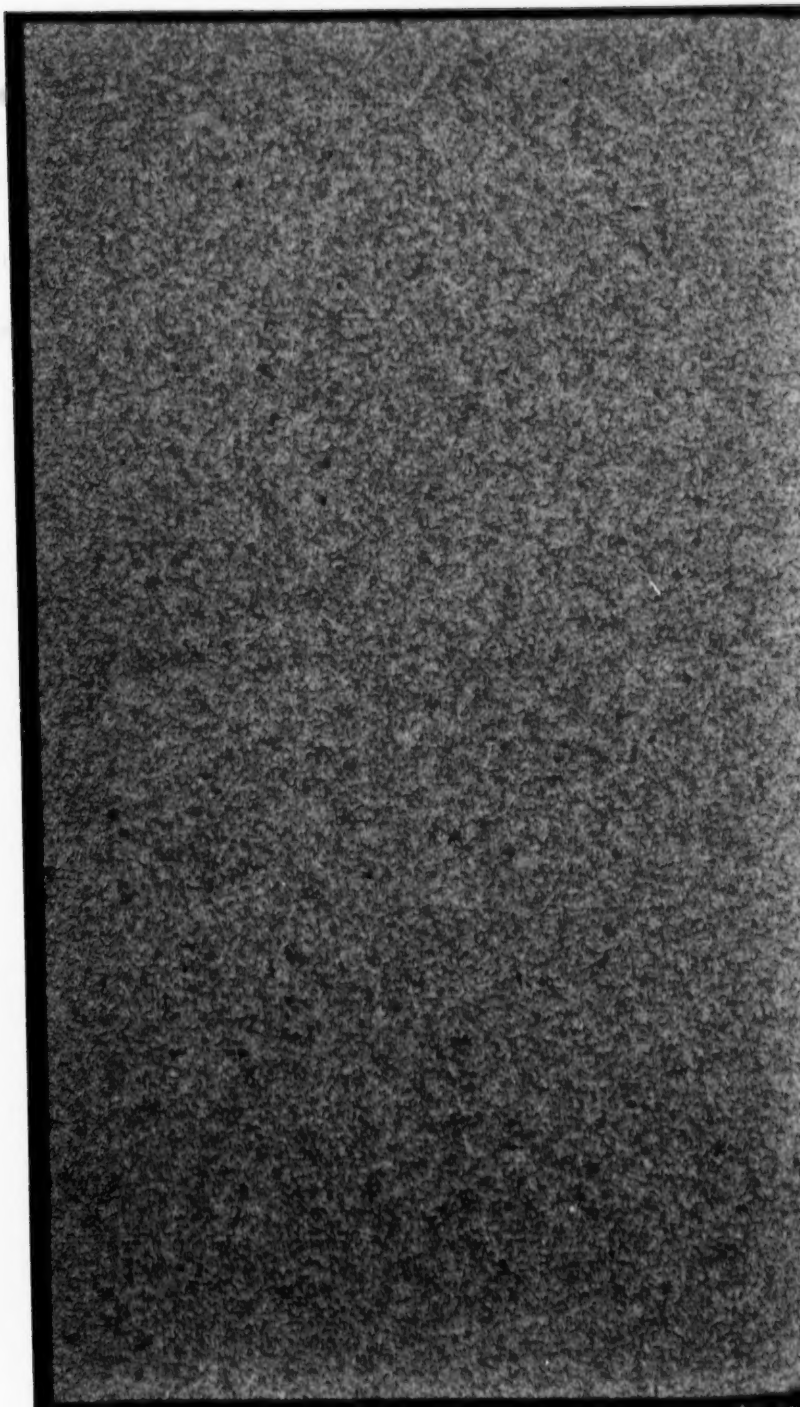

No. 548.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

WALTER A. EASTES, APPELLANT,

VS.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Filed September 23, 1921.

MOTION TO ADVANCE APPEAL.

Now comes Walter A. Eastes, appellant, by Elliott W. Major and John T. Barker, attorneys and counselors for said appellant, and moves this Honorable Court to advance his appeal, case No. 548, on the docket of the court for the October Term, 1921, and make an order

setting same for argument and submission on Monday, the 5th day of December, 1921, and as reasons therefor appellant states:

1. That the cases of Charles Corneli appellant, No. 174, and George J. Ghio, appellant, No. 175, and William H. Bryan, appellant, No. 428, were on motions advanced by the court and set for argument and submission on Monday, December 5th, 1921.

2. That the questions involved in the Corneli, Ghio and Bryan cases are identical in principle with the questions involved in the instant case. The appellant in each of the cases (Corneli, Ghio, Bryan and Eastes) was and is the owner of a warehouse receipt for a barrel of distilled spirits on deposit in a government bonded warehouse of the United States, and the distilled spirits in each case were manufactured and deposited in said government bonded warehouses long prior to the effective date of the Eighteenth Amendment to the Constitution of the United States and the National Prohibition Act and the effective date of the War Time Prohibition Act. Appellant in each case being the owner of the warehouse receipt seeks by his bill to remove the distilled spirits from the government bonded warehouse, where deposited, to his private dwelling, same to be used therein for lawful purposes only.

3. Appellant Corneli in case No. 174 has owned his warehouse receipt for the barrel of distilled spirits on deposit in the government bonded warehouse continuously since the spring of 1917, a date long prior to the effective

date of the Eighteenth Amendment and the National Prohibition Act. Appellant Ghio, in case No. 175, purchased his warehouse receipt on the 28th day of Feb., 1920, a date after the Eighteenth Amendment and the National Prohibition Act became effective. The barrel of spirits, however, was manufactured and deposited in the government bonded warehouse long prior to the effective date of both the Amendment and the National Prohibition Act. Appellant, William H. Bryan, in case No. 428, purchased and became the owner of the warehouse receipt for the barrel of spirits deposited in the government bonded warehouse on the 2nd day of October, 1919, a date prior to the effective date of the Eighteenth Amendment and the National Prohibition Act and after the enactment of the War Time Prohibition Act. Appellant, Walter A. Eastes in case No. 548, became the owner of his warehouse receipt for a brand of distilled spirits on the 24th day of August, 1917, a date prior to the effective dates of the National Prohibition Act and the Eighteenth Amendment. The bill was filed after the termination of the War Time Prohibition Act.

4. The argument and submission of this appeal on December 5th, 1921, will conserve both the time and the labor of the court in considering and disposing of this and other cases set for that day.

5. The appellant, Walter A. Eastes, has printed his brief in this cause and has, under the rules, filed thirty (30) copies of his brief with the clerk of this Honorable Court, and has accompanied same by proper and satis-

factory proof of service of a copy of his said brief upon Chas. C. Madison, United States District Attorney for the Western District of Missouri, counsel for the adverse parties.

6. The bill in the instant case was filed to enforce the right of the appellant, who is the bona fide owner of the warehouse receipt for one barrel of distilled spirits on deposit in the government bonded warehouse of the United States, to remove same to his private dwelling, situated in Kansas City, Missouri, and which is used as his dwelling only and to keep the same in said dwelling for the personal use of appellant, the members of his family and his bona fide guests when entertained therein, and for such uses only in his private dwelling as is now authorized and permitted by the National Prohibition Act; and the possession of said spirits is not desired for the purpose of barter or sale or of disposing of the same in violation of any law of the United States.

7. There are many thousands of persons owning small quantities of spirits, in bonded warehouses of the United States, which, like appellant, were lawfully acquired for private consumption in their dwellings only, and who have been denied the right to take possession of their property and remove same to their private dwellings for lawful uses therein. According to actual tests and common experience the "outage" on distilled spirits on deposit in government bonded warehouses, by leakage and evaporation, is approximately two gallons or more per barrel per annum. The loss to appellant and to those who

own distilled spirits and who are similarly situated as appellant has already been very great, and, no doubt, will extend into millions of gallons before this appeal would be reached in its regular order on the docket of this court, and an early disposition of the appeal will minimize this great and irreparable loss to appellant and other lawful owners.

8. The appellant is being denied the right to the lawful use of his property, lawfully acquired; and, being denied the right to the lawful use and enjoyment of same, his property is, by leakage and evaporation, daily being wasted, destroyed and lessened in quantity (same being in barrels and not bottled); and having been on deposit in said government bonded warehouse for some years prior to the adoption of the Eighteenth Amendment to the Constitution of the United States and the enactment of the Volstead Act, if appellant is not permitted to remove same and take possession thereof, at an early date, a large part of his property will have been wasted and destroyed and, in effect, confiscated. The appellant is further required to pay monthly storage charges and the value of his property is being needlessly consumed by the payment of such charges.

9. In addition to these facts and reasons why this appeal should be advanced the case presents questions of great public interest, and also, by reason of the taxes to be paid on withdrawal from bond, affects the revenues of the government of the United States. The questions presented by the particular facts in this appeal, relative to

the removal by the owner of his distilled spirits, lawfully acquired, from the government bonded warehouse to the private dwelling of appellant, to be used therein only as permitted and authorized by the "National Prohibition Act," should be specifically settled, and that at an early date, so as to save appellant and other owners similarly situated from great and irreparable property loss.

Respectfully submitted,

ELLIOTT W. MAJOR and
JOHN T. BARKER,
Attorneys and Counselors for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

WALTER A. EASTES, APPELLANT,
v.
GEORGE F. CRUTCHLEY, COLLECTOR OF Internal Revenue for the Sixth District of Missouri, et al. } No. 548.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR THE APPELLEES.

STATEMENT.

On August 24, 1917, appellant bought a barrel of whiskey. It has since been and is now in General Bonded Warehouse No. 2, Kansas City, Missouri.

On May 4, 1921, appellant, in writing, applied to the prohibition director for delivery, possession, the right to transport the barrel to his private dwelling, and the right to keep and use the same for lawful purposes therein. The director refused.

Appellant also tendered to the collector the full amount of the tax, demanded of him that he issue revenue stamps showing payment, and that he release the barrel. The collector likewise refused.

Appellant contends that in refusing to grant the application, accept the tender of tax, and issue the stamps, the appellees have claimed to act under the terms of the Volstead Act, while the right asserted by him is not forbidden by either the eighteenth amendment or the Volstead Act.

Appellant further contends that if the Volstead Act is susceptible of the construction placed upon it by the appellees, then that part of the act under which they purport to act is unconstitutional under the eighteenth amendment, in that it deprives him of his property without due process of law and without just compensation, and denies him the equal protection of the law contrary to the fifth amendment.

BRIEF.

The question in this case is fully embraced within the questions in issue in *Charles Corneli, Appellant*, v. *George H. Moore, Collector*, No. 174; *George J. Ghio, Appellant*, v. *George H. Moore, Collector*, No. 175; and *William H. Bryan, Appellant*, v. *J. W. Miles, Collector*, No. 428.

Corneli bought his barrel in the spring of 1917. Eastes bought his barrel on August 24, 1917. Ghio bought his warehouse receipt in February, 1920. Bryan bought his barrel on October 2, 1918.

The argument in the foregoing cases is applicable to the instant case and the final decrees in those cases will control here.

The decree should be affirmed.

JAMES M. BECK,
Solicitor General.

DECEMBER, 1921.

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